

PATENTHP Docket No.: 200208213-1
App. Serial No. 10/628,291**RECEIVED**
CENTRAL FAX CENTER**REMARKS****FEB 02 2007**

Favorable reconsideration of this application is respectfully requested in view of the foregoing amendments and following remarks.

Claims 15-17, 23, and 24 were previously canceled. Claims 1-14, 18-22, and 25-39 are currently pending, of which claims 1, 19, 29, and 33 are independent.

Claims 1-14, 18-22, and 25-39 were rejected under nonstatutory double patenting as allegedly being unpatentable over claims 1-45 of the '897 Patent (6,813,897).

Claims 33-36 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Budelman (5629608) in view of AAPA (Applicant's Admission of Prior Art).

Claim 37 was rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Budelman in view of AAPA and further in view of Bavaro et al. (4,974,272).

Claims 38-39 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Budelman in view of AAPA and further in view of Blair et al. (6,700,351).

The above rejections are respectfully traversed.

Non-Statutory Double Patenting

Claims 1-14, 18-22, and 25-39 were rejected under non-statutory double patenting as allegedly being unpatentable over claims 1-45 of the '897 Patent.

Independent Claim 1

Claim 1 was last amended in a filing of a Request for Continued Examination (RCE) on September 26, 2006 to incorporate subject matters of Claims 15-17 (now canceled) that were indicated as allowable and not subjected to a non-statutory double patenting rejection. See previous Office Action dated June 26, 2006. Because Claims 15-17 were deemed

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allowable and not subjected to a non-statutory double patenting rejection in the previous Office Action, it is respectfully submitted that the previous incorporation of their subject matters in Claim 1 should have rendered Claim 1 and its dependent Claims 2-14 and 18 allowable. Instead, Claim 1 was again subjected to the same non-statutory double patenting in the outstanding Office Action dated November 2, 2006. Yet, this Office Action made no mention of how the added subject matters of Claims 15-17 in Claim 1 are not patentably distinct from Claims 1-45 of the '897 Patent. Indeed, the Office Action is silent on which one(s) of Claims 1-45 of the '897 Patent would have made obvious the following allowed subject matters of Claims 15-17 that were added to Claim 1:

determining whether the power demand of the at least one electrical device substantially exceeds a combined output power for the primary power supply and the secondary power supply for a predetermined period of time; and
reducing the power demand of the at least one electrical device in response to determining the power demand of the at least one electrical device substantially exceeds the combined output power for a predetermined period of time, wherein reducing the power demand of the at least one electrical device comprises migrating workload from the at least one electrical device to another electrical device operable to receive one of a) power from the primary power supply and the secondary power supply, and b) power from a power supply other than the primary power supply and the secondary power supply; and wherein the another electrical device operating more efficiently with the migrated workload.

At most, the Office Action cited to Claim 35 of the '897 Patent, which merely indicates that the workload of a computer system can be increased or decreased "in order to increase or decrease a load on the at least one cooling system component." However, Claim 35 as well as other claims in the '897 Patent make no mention of "migrating workload" between systems as a way to increase or decrease their workloads. Thus, Claim 1 of the present invention recite features that are not found in the claimed invention of the '897 Patent and would not have been obvious absent additional teachings from other references.

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Accordingly, it is respectfully submitted that the Office Action failed to establish a *prima facie* case of non-statutory double patenting against Claim 1 and its dependent Claims 2-14 and 18. Therefore, it is respectfully submitted that Claims 1-14 and 18 are allowable over the references of record, and withdrawal of their rejection is respectfully requested.

Independent Claim 19

Claim 19 was also amended in the aforementioned RCE filing to incorporate subject matters of Claims 23 and 24 (now canceled) that were indicated as allowable and not subjected to a non-statutory double patenting rejection. See previous Office Action dated June 26, 2006. Furthermore, Claims 1-45 of the '897 Patent neither anticipate nor make obvious "migrating workload" as now recited in Claim 19. Accordingly, Claim 19 and its dependent Claims 20-22, 25-29, and 31 are allowable over the references of record for the same reasons for allowance set forth above for Claim 1. Therefore, withdrawal of their rejection is also respectfully requested.

Independent Claim 29

Claim 29 was also amended in the aforementioned RCE filing to incorporate subject matters of Claims 25 and 26 that were indicated as allowable and not subjected to a non-statutory double patenting rejection. See previous Office Action dated June 26, 2006. Because Claims 25 and 26 were deemed allowable and not subjected to a non-statutory double patenting rejection in the previous Office Action, it is respectfully submitted that the incorporation of their subject matters in Claim 29 should have rendered Claim 29 and its dependent Claims 30 and 32 allowable. Instead, Claim 29 was again subjected to the same non-statutory double patenting in the outstanding Office Action dated November 2, 2006.

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Yet, this Office Action made no mention of how the added subject matters of Claims 25 and 26 in Claim 29 are not patentably distinct from Claims 1-45 of the '897 Patent. Indeed, the Office Action is silent on which one(s) of Claims 1-45 of the '897 Patent would have made obvious the following subject matters of Claims 25 and 26 that were added to Claim 29:

wherein the first power supply is operable to receive power generated from a first power source and the second power supply is operable to receive power generated from a second power source, and the efficient operating point of the first power supply is based on a cost of electricity generated from the first power source and a cost of electricity generated from the second power source; and

wherein the circuit is operable to increase the load on the first power supply in response to the cost of electricity from the first power source being less than the cost of electricity from the second power source, and the power delivery control device is operable to increase the load on the second power supply in response to the cost of electricity from the second power source being less than the cost of electricity from the first power source.

Accordingly, it is respectfully submitted that the Office Action failed to establish a *prima facie* case of non-statutory double patenting against Claim 29 and its dependent Claims 30 and 32. Therefore, it is respectfully submitted that Claims 29, 30, and 32 are allowable over the references of record, and withdrawal of their rejection is respectfully requested.

Claim Rejections Under 35 U.S.C. §103

The test for determining if a claim is rendered obvious by one or more references for purposes of a rejection under 35 U.S.C. § 103 is set forth in MPEP § 706.02(j):

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaech*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

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Therefore, if the above-identified criteria are not met, then the cited reference(s) fails to render obvious the claimed invention and, thus, the claimed invention is distinguishable over the cited reference(s).

Claims 33-36 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Budelman in view of AAPA (Applicant's Admission of Prior Art). Claim 37 was rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Budelman in view of AAPA and further in view of Bavaro et al. (4,974,272). Claims 38-39 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Budelman in view of AAPA and further in view of Blair et al. (6,700,351).

Independent Claim 33 recites, *inter alia*, "wherein the efficient operating point is based on a power factor curve for the primary power supply means." The outstanding Office Action attempted to reject such claimed features with the following rationale: In Buldeman, "the efficient operating point of primary supply is based on allowable output voltage range;" in admitted prior art (AAPA), "the power factor is directly related to output power (FIG. 7); therefore, because both the efficient operating point and the power factor are based on the output power, "the operating point is based on power factor curve too, as output power and power factor are directly related."

In effect, the Office Action is alleging that if A is based on B, and C is also based on B, it follows that A must be based on C by the mere fact that both A and C are based on the same B. It is respectfully submitted that such a rationale is indeed illogical and irrational, not to mention mathematically incorrect. For example, although both $f(x,y)$ and $d(x,z)$ are functions of or based on x , it cannot be concluded that $f(x,y)$ and $d(x,z)$ are functions of or based on each other. As clearly defined in the specification, the power factor is a ratio of real

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power to apparent power (see specification, Equation 1, page 2). Any allegation that both an operating point (Budelman) and a power factor curve (AAPA) are based on output power cannot make obvious an operating point that is based on a power factor curve as actually recited in Claim 33. It is noted that the Office Action relied on neither Bavaro et al. nor Blair et al. to cure the aforementioned defects in Budelman and AAPA.

Because the Office Action failed to establish a *prima facie* case of obviousness against Claim 33, it is respectfully submitted that Claim 33 and its dependent Claims 34-39 are allowable over the references of record, and withdrawal of the rejection of these claims is respectfully requested.

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Conclusion

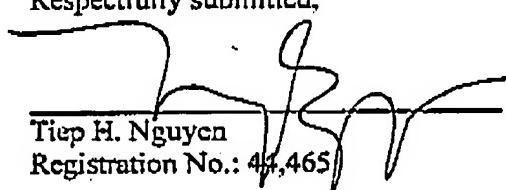
In light of the foregoing, withdrawal of the rejections of record and allowance of this application are earnestly solicited.

Should the Examiner believe that a telephone conference with the undersigned would assist in resolving any issues pertaining to the allowability of the above-identified application, please contact the undersigned at the telephone number listed below. Please grant any required extensions of time and charge any fees due in connection with this request to deposit account no. 08-2025.

Dated: February 2, 2007

By

Respectfully submitted,


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